IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO.4678 OF 2004

The President,
Daruwala Education Society
Tal.Gultekdi Dist.Pune ...Petitioner

Vs.

Shri.Sunil Dhakuji Ranpise
and Ors. ...Respondents

...

Mr.Chandrakant Badkar for Petitioner
Mr.C.R.Sonawane for Respondent No.1

...

CORAM : B.H.MARLAPALLE,J.

DATE : APRIL 5,2005

P.C.:

1. It appears that the respondent-teacher has filed an appeal No.74 of 2003 and contended that he has been otherwise terminated illegally from service after putting in about four years service. He was appointed by letter dated 27.5.1998 for a period of two years on probation but he was designated as ‘Coach’ in the high school at a salary of Rs.2200/-. In this petition, it is contended that an application was filed by the Petitioner-society at Exh.4 in Appeal No. 74 of 2003 before the School Tribunal praying for framing the following two preliminary issues:

1. Whether the appeal is maintainable under Section 9 of the M.E.P.S.Act, 1977 ?

2. Whether the Tribunal has jurisdiction to entertain the appeal?

. By the impugned order dated 11.3.2004, the Tribunal was pleased to reject the said application.

3. Admittedly, the present petitioner did not file its written statement and instead, the petitioner filed an application raising preliminary issues for consideration. The School Tribunal has rightly rejected the application. The employer must, at the threshold, file its reply in response to the notice from the Tribunal along with a copy of the Appeal memo and thereafter the employer is at liberty to raise preliminary issue. It is also noticed that the appellant has not impleaded the Education Officer (Secondary) Zilla Parishad, Pune as a necessary party in the appeal. It would be the Education Officer who would be in a better position to state before the Tribunal whether the appellant was appointed against a sanctioned post available either as an assistant teacher in physical education or as a Coach. Undoubtedly, the appellant holds the degree of B.P.Ed. and M.P.Ed. and therefore, he is qualified to be appointed as an assistant teacher in physical education.

4. The view taken by the Tribunal in rejecting the application at this stage, does not call for any interference in a petition under Article 227 of the Constitution of India. However, if the petitioner files its written statement and after the Education Officer also files his reply, the Tribunal may consider the preliminary issues as raised by the present petitioner and decide them if a fresh application is submitted by the petitioner during the trial of the Appeal.

5. The petition is therefore, rejected with liberty to the present petitioner to file a fresh application at an appropriate stage and to the Appellant to implead the Education Officer (Secondary) Zilla Parishad Pune as Respondent No.3 in the Appeal Memo.

[B.H.MARLAPALLE,J.]